

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 2:21-cv-530-SPC-NPM

MICHAEL PALLESCHI and DAVID
LETHEM,

Defendants.

ORDER

Before the Court is Plaintiff's Motion for Entry of Clerk's Default Against Defendant Michael Palleschi (Doc. 9). Defendant Palleschi has not responded to the Complaint, and now the SEC requests the Court enter a clerk's default against Palleschi. (Doc. 9). For the reasons discussed below, the Court denies the motion without prejudice.

Unless and until a party is held in default for failure to appear, every party is entitled to service of all written motions. Fed. R. Civ. P. 5(a). And unless a party is served by filing a motion with the Court's electronic filing system, a certificate of service must accompany the motion. Fed. R. Civ. P. 5(d)(1)(B). "Nothing in the text of Rule 55 excuses the service requirement for requests for entry of default (as distinguished from motions for default judgment), and Rule 5(a) on its face requires

such service.” *PNC Equip. Fin., LLC v. Taos Ventures, LLC*, No. 5:13-cv-529-OC-PRL, 2014 WL 12625121, *1 (M.D. Fla. Mar. 21, 2014) (quoting *Capitol Records v. Carmichael*, 508 F. Supp. 2d 1079, 1083 n.1 (S.D. Ala. 2007)); *see also U.S. Bank, N.A. as trustee for LSF8 Master Participation Tr. v. Tobin*, 754 F. App’x 843, 846 (11th Cir. 2018) (affirming default judgment when defendants failed to show they were not served with the motion for clerk’s default); *Allstate Ins. Co. v. Airport Mini Mall, LLC*, No. 1:15-CV-1422-AT, 2015 WL 13333577, *1 (N.D. Ga. Nov. 23, 2015) (denying motion for clerk’s default that was not accompanied by a proper certificate of service). Here, Plaintiff did not file a certificate of service with its Motion for Clerk’s Default, and there is no other indication in the record that Plaintiff served this motion on Defendant. (*See* Doc. 9). Accordingly, the Motion for Entry of Default (Doc. 9) is **DENIED without prejudice**.

ORDERED in Fort Myers, Florida on September 9, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE